CPA Australia Ltd v Manjeet Singh a/l Santokh Singh and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-02–1559–07 OF 2013 AND W-02–1733–08 OF 2013
LINTON ALBERT, ROHANA YUSUF AND VERNON ONG JJCA
3 SEPTEMBER 2014

Limitation — Accrual of cause of action — Civil claim — Enquiry — Suspension of Malaysian Divisional Council of CPAA for six months — Plaintiff not present during hearing — Plaintiff's letter considered as submission — Plaintiff found guilty on three out of five charges — When cause of action accrued — Whether plaintiff's claim time barred

The first defendant was an accounting body incorporated in Australia. Membership of CPAA was voluntary and was subject to the Constitution and by-laws of CPAA. According to articles 72–81 of the CPAA Constitution, CPAA is controlled and managed by its board of directors ('the board'). The CPAA was registered as a foreign company in Malaysia. The plaintiff was admitted as a member of CPAA and was elected as a Divisional Councillor of the Malaysian Divisional Council of CPAA for the term 2003/2004. As a result of several complaints received by CPAA relating to the President and some of the Divisional Councillors of the Malaysian Division, in December 2003 CPAA notified the plaintiff and other divisional councillors that the Malaysian Divisional Council was suspended temporarily for six months, pending the holding of an enquiry into the complaints. Subsequent to investigations carried out, the board decided to initiate disciplinary proceedings against the president of the Malaysia Division and three divisional councillors including the plaintiff. The plaintiff received a notice of meeting together with a detailed case book dated that he had a case to answer with respect to the alleged misconduct. Meanwhile, a disciplinary committee ('DC') which was scheduled in Kuala Lumpur on 28 May 2004 was postponed to 26–27 July 2004 to consider the matter. The plaintiff was notified of the rescheduled hearing of the DC vide CPAA's letter dated 24 June 2004. On 23 July 2004, the plaintiff wrote to CPAA stating, inter alia, that he will not be attending the scheduled hearing. On 26 July 2004, the DC proceeded with the hearing. The plaintiff was not present at the hearing. The chairman of the DC entered a plea of not guilty on the plaintiff's behalf. The DC proceeded to consider the charges on its merits; the plaintiff's letter of 23 July 2004 was taken as the plaintiff's submission and considered. The DC unanimously found the plaintiff guilty on three out of five charges. The plaintiff lodged his appeal under an undated letter which was received by CPAA out of time. The appeal was dismissed. In the High Court, the judicial commissioner ('the JC') took the view that the cause of action

began on 4 August 2004, when CPAA's formal written notification of the findings and decision of the disciplinary committee was provided to the plaintiff or on 29 September 2004 when CPAA published the decisions of the disciplinary committee. As such, the plaintiff's claim which was filed on 13 July 2010 was not time barred. The plaintiff was awarded nominal damages of RM50,000; no award for aggravated and exemplary damages was made. Hence, the present appeal

Held, allowing the Appeal No 1559 with costs and dismissing the Appeal No 1733:

(1) It was clear that the suspension of the Malaysian Divisional Council and its divisional councillors took effect on 9 December 2003. Notwithstanding whether the plaintiff's claim was founded on contract or tort, time ran from the date of the breach; and in this case the six year period would have expired on 8 December 2009. Since the claim was filed on 13 July 2010, the claim insofar as it relates to the suspension of the Malaysian Divisional Council and its divisional councillors was clearly time barred (see para 21).

(2) The plaintiff who was a member of CPAA shall be bound by the CPAA Constitution, the articles of association and the by-laws. According to articles 26 and 27(1) of the CPAA Constitution, the board was empowered to regulate the conduct of its members and impose penalties on any person found guilty of a breach of the CPAA Constitution or by-laws. It is also stipulated under article 35 of the CPAA Constitution that a division is subject to directions given from time to time by the board. More significantly, article 92 provides that a divisional council's powers duties and discretions is subject always to the control of the board (see para 22).

(3) The finding of the JC that there was a distinction between the Australian body and the Malaysian body and that the plaintiff whilst being a member of the Australian body was also a member of the Malaysian body was a misdirection in fact and in law. The Malaysian division was established by the board by way of a board resolution dated 1 April 2002 pursuant to article 35 of the CPAA Constitution. Members are attached to a division by virtue of their geographical residence under article 35 of the CPAA Constitution (see paras 29–30).

(4) The JC failed to judicially appreciate the evidence and had acted on some irrelevant evidence as to render his decision so unreasonable and as such, the order of the High Court was set aside in the interest of justice (see para 43).

[Bahasa Malaysia summary

Defendan adalah badan perakaunan yang diperbadankan di Australia. Keahlian CPAA adalah atas dasar sukarela dan adalah tertakluk kepada perlembagaan dan undang-undang kecil CPAA. Mengikut artikel 72–81 Perlembagaan CPAA, CPAA dikawal dan diuruskan oleh lembaga pengarahnya ('lembaga'). CPAA didaftarkan sebagai syarikat asing di Malaysia. Plaintif dimasukkan sebagai ahli CPAA dan dipilih sebagai Ahli Majlis Bahagian, Majlis Bahagian Malaysia CPAA untuk penggal 2003/2004. Akibatnya beberapa aduan diterima oleh CPAA berkaitan Presiden dan sebahagian Ahli Majlis Bahagian, Bahagian Malaysia, pada bulan Disember 2003 CPAA memberitahu plaintif dan ahli majlis bahagian yang lain bahawa Majlis Bahagian Malaysia telah digantung sementara untuk selama enam bulan, sementara menunggu siasatan ke dalam aduan tersebut. Selepas siasatan dijalankan, lembaga memutuskan untuk memulakan prosiding tatatertib terhadap presiden Bahagian Malaysia dan tiga ahli majlis bahagian termasuk plaintif. Plaintif menerima notis mesyuarat bersama dengan buku kes terperinci yang menyatakan bahawa dia ada kes untuk dijawab berkaitan salah laku yang didakwa. Sementara itu, jawatankuasa tatatertib ('JT') yang dijadualkan di Kuala Lumpur pada 28 Mei 2004 ditangguhkan kepada 26–27 Julai 2004 untuk mempertimbangkan perkara tersebut. Plaintif diberitahu mengenai penjadualan semula pendengaran JT melalui surat CPAA bertarikh 24 Jun 2004. Pada 23 Julai 2004, plaintif menulis kepada CPAA menyatakan, antara lain, bahawa dia tidak akan menghadiri penjadualan semula pendengaran tersebut. Pada 26 Julai 2004, JT meneruskan dengan pendengaran tersebut. Plaintif tidak hadir pada pendengaran tersebut. Pengerusi JT memasukkan pli tidak bersalah bagi pihak plaintif. JT meneruskan untuk mempertimbangkan tuduhan-tuduhan atas meritnya; surat plaintif bertarikh 23 Julai 2004 diambil sebagai penghujahan plaintif dan dipertimbangkan. JT sebulat suara mendapati plaintif bersalah atas tiga daripada lima tuduhan tersebut. Plaintif membuat rayuannya di bawah surat yang tidak bertarikh yang diterima oleh CPAA di luar masa. Rayuan ditolak. Di Mahkamah Tinggi, pesuruhjaya kehakiman ('PK') berpandangan bahawa kausa tindakan bermula pada 4 Ogos 2004, apabila pemberitahuan bertulis formal CPAA mengenai dapatan dan keputusan jawatankuasa tatatertib diberikan kepada plaintif atau pada 29 September 2004 apabila CPAA menerbitkan keputusan jawatankuasa tatatertib tersebut. Oleh itu, tuntutan plaintif yang difailkan pada 13 Julai 2010 tidak dihalang masa. Plaintif diawardkan ganti rugi nominal sebanyak RM50,000; tiada award untuk ganti rugi tambahan dan teladan dibuat. Maka, rayuan ini.

Diputuskan, membenarkan Rayuan No 1559 dengan kos dan menolak Rayuan No 1733:

(1) Adalah jelas bahawa penggantungan terhadap Majlis Bahagian Malaysia dan ahli majlis bahagiannya berkuat kuasa pada 9 Disember 2003.

Meskipun sama ada tuntutan plaintif didasarkan atas kontrak atau tort, masa bermula dari tarikh kemungkiran; dan dalam kes ini tempoh enam tahun akan tamat pada 8 Disember 2009. Memandangkan tuntutan difailkan pada 13 Julai 2010, tuntutan setakat berkaitan penggantungan Majlis Bahagian Malaysia dan ahli majlis bahagiannya jelas dihalang masa (lihat perenggan 21).

(2) Plaintif yang mana adalah ahli CPAA akan terikat oleh Perlembagaan CPAA, tataurusan persatuan dan undang-undang kecil. Mengikut artikel 26 dan 27(1) Perlembagaan CPAA, lembaga diberi kuasa untuk mengawal tingkah laku ahli-ahlinya dan mengenakan penalti ke atas mana-mana orang yang didapati bersalah terhadap kemungkiran Perlembagaan CPAA atau undang-undang kecil. Ia juga dinyatakan di bawah artikel 35 Perlembagaan CPAA bahawa bahagian adalah subjek kepada arahan yang diberikan dari masa ke masa oleh lembaga. Lebih nyata sekali, artikel 92 memperuntukkan bahawa tugas kuasa dan budi bicara Majlis Bahagian adalah sentiasa subjek kepada kawalan lembaga (lihat perenggan 22).

(3) Dapatan PK bahawa terdapat perbezaan di antara Badan Australia dan Badan Malaysia dan bahawa plaintif sementara menjadi ahli Badan Australia juga adalah ahli Badan Malaysia adalah salah arah dari segi undang-undang dan fakta. Bahagian Malaysia adalah dierbadankan oleh lembaga melalui resolusi lembaga bertarikh 1 April 2002 berikutan artikel 35 Perlembagaan CPAA. Ahli-ahli adalah terikat kepada Bahagian mengikut kawasan kediaman geografi mereka di bawah artikel 35 Perlembagaan CPAA (lihat perenggan 29–30).

(4) PK gagal untuk secara kehakiman menilai keterangan dan telah bertindak atas keterangan yang tidak relevan untuk menyebabkan keputusannya tidak munasabah dan oleh itu, perintah Mahkamah Tinggi diketepikan dalam kepentingan keadilan (lihat perenggan 43).]]]]]

Notes

For cases on accrual of cause of action in general, see 9 *Mallal's Digest* (4th Ed, 2014 Reissue) paras 2174–2193.

Legislation referred to

Companies Act 1965 ss 4(1), 144, 330(1)
Limitation Act 1953 s 6
Societies Act 1966

Appeal from: Civil Suit No S-22–644 of 2010 (High Court, Kuala Lumpur)

Lim Koon Huan (Nicholas Lai with him) (Skrine) in Civil Appeal No

W-02–1559–07 of 2013 for the appellant.
Kavimani Muthayam (Sathyanthan with her) (Kavi & Co) in Civil Appeal No W-02–1733–08 of 2013 for the appellant.
Kavimani Muthayan (S Sathyananthan with her) (Kavi & Co) in Civil Appeal No W-02–1559–07 of 2013 for the respondent.
Lim Koon Huan (Nicholas Lai with him) (Skrine) in Civil Appeal No W-02–1733–08 of 2013 for respondent.

Vernon Ong JCA:

INTRODUCTION

[1] There were two appeals before us. Both appeals are in respect of the High Court decision dated 28 June 2013 allowing the plaintiff's claim for relief to nullify the findings, suspension and forfeiture of the plaintiff's membership with the first defendant as a result of disciplinary proceedings undertaken by the first defendant against the plaintiff and for damages.

Appeal No 1559 is the first defendant's appeal against part of the decision of the High Court relating to the issue of the first defendant's liability and the award of damages.

Appeal No 1733 is the plaintiff's appeal against part of the decision on the quantum of damages.

After hearing of submissions of counsel of the parties we allowed Appeal No 1559 with costs of RM20,000 and dismissed Appeal No 1733 with costs of RM10,000. The grounds of the decision are as follows. For convenience, the parties shall be referred to as they were in the High Court suit.

BRIEF ACCOUNT OF THE SALIENT FACTS

[2] The first defendant CPA Australia ('CPAA') is an accounting body incorporated in Australia as a public company limited by guarantee. It has worldwide membership with more than 150,000 finance, accounting and business professionals in 121 countries. Membership of CPAA is voluntary and is subject to the Constitution and by-laws of CPAA. According to articles 72–81 of the CPAA Constitution, CPAA is controlled and managed by its board of directors ('the board'). On 7 May 2002, CPAA was registered as a foreign company in Malaysia.

[3] On 18 February 2002, the board established the Malaysian Division of CPAA pursuant to article 35 of the CPAA Constitution.

[4] The plaintiff was admitted as a member of CPAA on 12 May 1993. The plaintiff was elected as a Divisional Councillor of the Malaysian Divisional Council of CPAA for the term 2003/2004. A

[5] As a result of several complaints received by CPAA relating to the President and some of the Divisional Councillors of the Malaysian Division, in December 2003 CPAA notified the plaintiff and other divisional councillors that the Malaysian Divisional Council was suspended temporarily for six months, pending the holding of an enquiry into the complaints. B

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[6] Subsequent to investigations carried out, the board decided to initiate disciplinary proceedings against the then President of the Malaysia Division and three divisional councillors including the plaintiff.

[7] The plaintiff received a notice of meeting together with a detailed case book dated 20 April 2004 that he had a case to answer with respect to the alleged misconduct. D

[8] Meanwhile, a disciplinary committee ('DC') which was scheduled in Kuala Lumpur on 28 May 2004 was postponed to 26–27 July 2004 to consider the matter. E

[9] The plaintiff was notified of the rescheduled hearing of the DC vide CPAA's letter dated 24 June 2004. On 23 July 2004, the plaintiff wrote to CPAA stating, inter alia, that he will not be attending the scheduled hearing. F

[10] On 26 July 2004, the DC proceeded with the hearing. The plaintiff was not present at the hearing. The Chairman of the DC entered a plea of not guilty on the plaintiff's behalf. The DC proceeded to consider the charges on its merits; the plaintiff's letter of 23 July 2004 was taken as the plaintiff's submission and considered. G

[11] On 27 July 2004, the DC unanimously found the plaintiff guilty on three out of five charges laid while two other charges were not proceeded with. Consequently, the DC decided to: (i) forfeit the plaintiff's membership, with a ban on re-applying for admission for ten years; (ii) publication of the DC's decision; and (iii) costs of RM20,000. H

[12] The plaintiff was given formal notification of the DC's decision and of his right and deadline to file an appeal against the said decision. I

[13] The plaintiff lodged his appeal under an undated letter which was received by CPAA out of time.

[14] By CPAA's letter dated 21 September 2004, the plaintiff was informed that his appeal had been rejected.

FINDINGS OF THE HIGH COURT

[15] At the outset, it is pertinent to note the learned JC's finding that the suspension of the Malaysian Divisional Council and the divisional councillors is wrong is premised on the following factors:

(a) CPAA ('the Australian body') and CPAA registered as a foreign company in Malaysia ('the Malaysian body') are separate entities;

(b) the plaintiff whilst being a member of the Australian body was also a member of the Malaysian body;

(c) CPAA has no power to suspend the Malaysian Divisional Council;

(d) the plaintiff was not given an opportunity to answer any concerns that the Australian body may have had;

(e) the board of the Australian body failed to requisition an extraordinary general meeting pursuant to s 144 of the Companies Act 1965 and table a resolution to a vote of no confidence against the entire council of the Malaysian body; and

(f) the appointment of DW1 as a duly authorised officer to investigate into the complaints was improper as such powers of investigation is vested with the Divisional Director of the Malaysian Divisional Council or duly authorised officer appointed by the director of the Malaysian body.

[16] As a consequence of the aforesaid findings, the learned JC further found that the penalties imposed by the disciplinary committee violated the plaintiff's contractual rights under the CPAA's Constitution, articles of association and by-laws. This led to the Appeal No 1559.

[17] The learned JC also held that the publication on CPAA's worldwide web of the charges, the decisions of the disciplinary committee of CPAA and the consequent penalty imposed on the plaintiff defamed the plaintiff's reputation professionally and personally. CPAA's defence of qualified privilege was rejected on the ground that CPAA had acted maliciously and in blatant disregard of the plaintiff's rights. This forms the subject of Appeal No 1733.

[18] On the issue of limitation, the learned JC took the view that the cause of action began on 4 August 2004, when CPAA's formal written notification of the findings and decision of the disciplinary committee was provided to the

plaintiff or on 29 September 2004 when CPAA published the decisions of the disciplinary committee. As such, the plaintiff's claim which was filed on 13 July 2010 was not time barred.

The plaintiff was awarded nominal damages of RM50,000 no award for aggravated and exemplary damages was made.

DECISION OF THIS COURT

[19] Having considered the oral and written submissions of the parties and having perused the record of appeal and the common core bundles filed herein, we proposed to deal with the issue of limitation first.

Limitation

[20] It is CPAA's pleaded case that the claim is time barred as the claim was brought after the expiry of six years from the date on which the cause of action accrued (s 6 of the Limitation Act 1953).

[21] On this issue, the facts are uncontroverted. It is clear that the suspension of the Malaysian Divisional Council and its divisional councillors took effect on 9 December 2003. Notwithstanding whether the plaintiff's claim is founded on contract or tort, time runs from the date of the breach; and in this case the six year period would have expired on 8 December 2009. Since the claim was filed on 13 July 2010, the claim insofar as it relates to the suspension of the Malaysian Divisional Council and its divisional councillors is clearly time barred.

Validity of the disciplinary proceedings

[22] Pursuant to article 3(2) of the CPAA , the plaintiff who is a member of CPAA shall be bound by the CPAA Constitution, the articles of association and the by-laws. According to articles 26 and 27(1) of the CPAA Constitution, the board is empowered to regulate the conduct of its members and impose penalties on any person found guilty of a breach of the CPAA Constitution or by-laws. It is also stipulated under article 35 of the CPAA Constitution that a division is subject directions given from time to time by the board. More significantly, article 92 provides that a divisional council's powers duties and discretions is subject always to the control of the board.

[23] We agree with learned counsel for CPAA that, articles 26, 27(1), 35 and 92 of the CPAA Constitution read together empower the board to suspend the Malaysian Divisional Council and regulate the conduct of its members including on disciplinary matters regarding a member.

[24] As such, the board resolution passed on 9 December 2003 confirming the suspension of the Malaysian Divisional Council including the plaintiff's role as a divisional councillor for the purposes of conducting an investigation into the complaints is valid and proper.

Whether CPAA ('the Australian body') and CPAA registered as a foreign company in Malaysia ('the Malaysian body') are separate entities?

[25] A foreign company is defined as a company, corporation, society, association, or other body incorporated outside Malaysia (see s 4(1) of the Companies Act 1965 ('the CA 1965')). A foreign company which has a place of business or carrying on business within Malaysia must be registered under the CA 1965. The term 'carrying on business' is general in nature and encompasses establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property in Malaysia as an agent, legal personal representative or trustee, whether by servants or agents or otherwise (s 330(1) of the CA 1965). The registration of CPAA as a foreign company in Malaysia is intended to register CPAA's presence in Malaysia for the purpose of carrying on business within Malaysia. The fact of registration of CPAA did not in itself create a new legal entity under the CA 1965.

[26] In contrast, the formation or incorporation of a new company is preceded by the reservation of the proposed name of the intended company by its incorporators. Thereafter, the incorporators must lodge with the registrar of companies certain documents including the memorandum and articles of association, documents required to be filed by the promoters, the first directors and company secretary and statutory declarations. Once the registrar of companies is satisfied that the papers are in order, the registrar will issue a certificate of incorporation. Upon the issuance of the certificate of incorporation, the company is recognised by law as being a separate legal person from its members.

[27] Therefore, the fact that CPAA was registered as a foreign company in Malaysia did not in itself create a separate and different entity. The registration of CPAA as a foreign company in Malaysia on 7 May 2002 was to enable the transfer of the publishing licence of member's newsletter 'Berita CPA' to the registered foreign company. Prior to its incorporation, a society established under the Societies Act 1966 held the publishing licence. As the society was being wound-up, the registration of CPAA as a foreign company in Malaysia was necessary to facilitate the transfer of the licence.

[28] In the circumstances, the foreign company is in law and in fact the registered local corporate entity of CPAA. As such CPAA and the foreign company are not distinct and separate entities.

[29] Accordingly, we are constrained to hold that the finding of the learned JC that there is a distinction between the Australian body and the Malaysian body and that the plaintiff whilst being a member of the Australian body is also a member of the Malaysian body is a misdirection in fact and in law.

[30] As adverted to earlier, the Malaysian Division was established by the board by way of a board resolution dated 1 April 2002 pursuant to article 35 of the CPAA Constitution. Members are attached to a division by virtue of their geographical residence under article 35 of the CPAA Constitution.

[31] As such, the Malaysian division is part of the structure of CPAA and is subject to the direction of the board. All members of CPAA including those attached to the Malaysian division are governed by the CPAA Constitution and by-laws. Therefore, the plaintiff's argument that the Malaysian division of CPAA is a different entity from CPAA is fallacious.

[32] In this light, the plaintiff's argument that the CPAA had no power to suspend the Malaysian Divisional Council and the plaintiff as a divisional councillor is without merit. The power of the board to suspend the Malaysia Divisional Council and its divisional councillors is provided under article 92 of the CPAA Constitution. Further, the plaintiff's complaint that he was not given an opportunity to answer any concerns that CPAA may have, is misplaced as the suspension was to facilitate investigations; and the plaintiff was in fact given ample opportunity to answer. At any rate, there is no provision in the CPAA Constitution and by-laws that an opportunity be afforded before the Board exercises its power of suspension.

[33] The learned JC also said that the board failed to convene an EGM to table a resolution to a vote of no confidence against the Malaysian Divisional Council. With respect we are unable to agree with that view for the simple reason that since the Malaysian Divisional Council is part of the internal structure of CPAA and is not a different incorporated entity, the question of convening an EGM does not arise. Further, since the plaintiff is neither a member nor a director of the foreign company, he is in no position to call for an EGM.

[34] The learned JC also alluded to the fact that the investigations were improper as the investigation powers were vested with the divisional director. In the present case, the divisional director was also suspended. As such, it was not possible for the divisional director to carry out any investigations. Learned counsel for CPAA submitted that the learned JC's holding was presumably premised on by-law 302.4 which provides:

> Subject to by-law 303 below, any complaint against a member of the Society shall be lodged with the Divisional Director of the Division to which the member is attached or with the National Secretary if the member is not attached to a Division.

[35] Since the divisional director had been suspended, by-law 302.4 could not be resorted to. It is therefore necessary to consider the import of the operative words 'Subject to By-Law 303 below'. By-law 303 states:

> The Council of a Division or a Divisional Director or National Secretary of National Council or duly authorised officer may lay any charge against or raise in relation to any member any matter or circumstance which shall come or be brought under its or their notice and which in the opinion of the Council or Director or National Secretary or duly authorised officer concerned may need investigation.

[36] A reading of by-law 303 shows that the power to deal with a complaint is not vested solely with a divisional director. Clearly, the board of other duly authorised officer (in this case DW2) may lay any charge or raise any matter relating to any member that may need investigation. For the foregoing reasons, we do not agree with the learned JC on this point.

[37] The learned JC also held that the penalties imposed on the plaintiff violated the plaintiff's contractual rights under the CPAA Constitution and by-laws. On the undisputed facts, the plaintiff was given 14 days' notice of the disciplinary hearing but elected to not to attend the same. The requirements for the giving of at least 14 days prior notice pursuant to article 29 had been complied with by CPAA. The plaintiff's written response was nevertheless considered by the disciplinary committee at the hearing.

[38] Pursuant to article 27(1) of the CPAA Constitution, the board may impose any of the penalties set out in sub-cl (2). Sub-clause (2) provides for penalties that may be imposed by the board and they include among others, the forfeiture of membership, a fine not exceeding the amount set by the board, and such other penalty as the Board deems appropriate in the circumstances.

[39] In the circumstances, we are also constrained to disagree with the findings of the learned JC on the issue of penalties imposed on the plaintiff. In the same breath, the plaintiff's claim for damages for defamation is clearly unsustainable.

[40] We also observe in passing that in his grounds of decision the learned JC did not advert to the earlier High Court decisions made in two cases arising from the same facts, concerning the same allegations of misconduct and from the same set of disciplinary proceedings. Learned counsel for CPAA submitted that the prayers of all three cases are virtually the same. Upon a perusal of the relevant cause papers, we find that there is basis in the submission. In both

cases, the High Court judges dismissed the claims on the grounds that: (i) the proceedings were private proceedings involving the membership of CPAA; (ii) the plaintiffs were bound by the CPAA Constitution and by-laws; and (iii) there was no miscarriage of justice in the disciplinary proceedings. If the learned JC had given sufficient consideration to the two other High Court decisions, the learned JC might have arrived at a different conclusion.

[41] Insofar as Appeal No 1733 is concerned, the award of damages was made on the basis of the plaintiff's claim for defamation as a result of the CPAA's publication of the charges, the decision of the disciplinary committee and the consequent penalty imposed including the forfeiture of his membership and the fine imposed on him on CPAA's worldwide web. The learned JC held that since CPAA had acted maliciously and in blatant disregard of the plaintiff's rights, CPAA has lost their defence of qualified privilege.

[42] Since the issue of liability has been allowed in CPAA's favour, Appeal No 1733 on the quantum of damages has been rendered academic.

[43] As a general rule, an appellate court will not interfere with the findings of fact by a trial unless it can be shown that there are exceptional circumstances. In the present case, we are satisfied that the learned JC has failed to judicially appreciate the evidence and had acted on some irrelevant evidence as to render his decision so unreasonable that we are constrained to set aside the order of the High Court in the interest of justice.

[44] In consequence, Appeal No 1559 was allowed with costs and Appeal No 1733 was dismissed with costs as stated above.

Appeal No 1559 allowed with costs and dismissing Appeal No 1733.

Reported by Afiq Mohamad Noor